IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:12-07-2006

Coram:

The Honourable Mr. Justice Elipe DHARMA RAO
and
The Honourable Ms. Justice K. SUGUNA

W.P. No.15509 of 1998
W.P.No.15062 of 1998
and
W.P.M.P. No.23385 of 1998

W.P. No.15509 of 1998:

1. Nuclear Power Corporation
   Head Office
   Homi Baba Road
   Golabe
   Bombay 400 005

2. The Chief Superintendent
   Madras Atomic Power Station
   Kalpakkam
   Kancheepuram District .... Petitioners

:versus:

1. P. Ravindran
2. B. Sivakumar
3. P. Sethuraman
4. D. Veeranarayanan
5. K. Kandan
6. N. Thiruvenkadam
7. K. Gunasekaran
8. A. Abadul Saleem
9. N. Bhaskar
10. Central Administrative Tribunal
    Madras Bench, rep. by Registrar
    City Civil Court Buildings
    Madras 104 .... Respondents

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

W.P. No.15062 of 1997:

The Chief Superintendent
Madras Atomic Power Station
Nuclear Power Corporation of India
Kalpakkam .... Petitioner

:versus:

1. Tamilnadu Atomic Power Employees Union
   Kalpakkam, rep. by its General Secretary
   J. Nelson Rajasekar

2. J. Jelson Rajasekar

3. The Central Administrative Tribunal
   Madras Bench, High Court Campus
   Madras-104

4. Union of India, rep. by Secretary
   to Government of India, Department
   of Atomic Energy, Bombay .... Respondents

- - - - -

Petitions under Art.226 of the Constitution of India, praying for Writ of Certiorari, calling for the records pertaining to the proceedings in R.A. No.10 of 1998 dated 24-7-1998 on the file of the Central Administrative Tribunal, Madras Bench and Writ of Certiorari, calling for the records pertaining to the Proceedings in O.A. No.1095 of 1994 dated 16-6-1997 on the file of the Central Adminsitrative Tribunal, Madras Bench and quash the same respectively.

For Petitioners
(in both the W.Ps) :: Mr. N. Jothi
For Respondents
(in both the W.Ps) :: Mr. C.K. Chandrasekaran
for M/s. Row and Reddy
(for R1, R2 and R4 in WP.No.15062/98 and
for R1 to R7 and R9 in WP.No.15509/1998)

R3 in WP.15062/98 and
R10 in WP.15509/98 - Tribunal
R8 in WP.No.15509/98 - Not Ready in Notice

- - - - -

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Elipe DHARMA RAO, J.

These writ petitions challenge the orders dated 24-7-1998 and 16-6-1997 passed by the Central Administrative Tribunal, Madras Bench in R.A. No.10 of 1998 in O.A. No.1488 of 1993 and O.A. No.1095 of 1994 passed respectively.

2. The facts, in brief, leading to the filing of these writ petitions are as under:

Department of Atomic Energy, Madras Atomic Power Project, a Government of India undertaking, invited applictions for the post of 'Stipendiary Trainees' under various categories of employment. Such advertisements were issued in the years 1980, 1982 and 1983. Several candiates were selected and engaged as 'Stipendiary Trainess' on consolidated monthly pay. After successful completion of the training period, the trainess were absorbed and appointed in the regular post, viz. Tradesman-B, carrying the regular time scale of pay, and they were also given one or two increments based on their performance during the training period.

The Government of India, Department of Personnel and Training, issued an Office Memorandum, dated 22-10-1990, whereby it was decided that in case where a person was selected for regular appointment and before formally taking over charge of the post for which selected person is required to undergo training, the training period undergone by such a government servant whether on remuneration or stipend or otherwise may be treated as duty for the purpose of drawing increments. This benefit was granted with effect from 1-10-1990. This was followed by another Office Memorandum dated 31-3-1992 extending the very same benefit to the government servants who have undergone such training on or after 1-1-1986, but the benefit of counting the period for pay was made admissible on notional basis with effect from 1-1-1986 and the actual benefit was given with effect from 1-10-1990.

Acting on the aforesaid office memoranda, the members of the Tamilnadu Atomic Power Employees Union as well as some individual employees of the Madras Atomic Power Station, who were intially engaged as Stipendary Trainees and subsequently absorbed and fitted in the regular posts carrying the time scale of pay, made several representations to the authorities concerned to treat their period of training as duty period for the purpose of grant of increments, but there was no consideration of their representations. The aggrieved employees were therefore constrained to file an application, O.A. No.1095 of 1994, before the Tribunal, seeking the relief that the period of training undergone by the stipendary trainees before absorption in regular time scale of pay of Tradesman

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

is to be counted as duty period for the purpose of increments.

The Tribunal, relying on the Office Memorandum bearing Ref.16/16/89 Estt-Pay.I dated 30-8-1994 and the order dated 11-11-1996 in O.A. No.1488 of 1993, allowed the original application and directed the respondents concerned to grant the benefits of the said office memorandum to the employees concerned.

A review application, R.A. No.10 of 1998, was filed by the Nuclear Power Corporation/Madras Atomic Power Station, to review the order dated 11-11-1996 passed in O.A. No.1488 of 1993. The Tribunal, however, rejected the review application.

Aggrieved, Nuclear Power Corporation/Madras Atomic Power Station have filed the above writ petitions challenging the order dated 24-7-1998 in R.A. No.10 of 1998 and the order dated 16-6-1997 in O.A. No.1095 of 1994.

3. Learned counsel appearing for the petitioner corporation submitted that under Fundamental Rule 26, the service rendered during the training period can be counted only if the employees are appointed in a substantive vacancy and drawing the time scale of pay. In the present case, the respondents concerned were selected as trainees only. During the training period they were paid a consolidated pay of Rs.550/- per month and no regular time scale of pay was given to them. Therefore, the training period of two years cannot be counted for the purpose of grant of increment.

4. In support of his contention, learned counsel for the petitioner drew our attention to the advertisements under which the trainees were selected and, in particular he invited our attention to Advertisement No.5/82 issued in December, 1983. Learned counsel argued that the advertisement was very clear in its terms that the applications were invited for "Stipendary Trainees", that the duration of "training" would be two years, that the selected trainees during the training period would be paid "stipend" at the rate of Rs.500/- and Rs.400/- as the case may be on consolidated basis. Learned counsel submitted that the advertisement further clarified that at the end of the training, the trainees would be subjected to trade test and interview and on the basis of the performance during the training, the successful trainees would be considered for absorption in the posts of Scientific Assistant/Tradesman with or without advance increments carrying the regular time scale of pay and further on completion of training, if an appointment to regular grade was given, family accommodation would be provided subject to availability and seniority. Learned counsel further drew our attention to the clause in the advertisement providing for execution of bond by the trainees giving an undertaking that they would complete the training and would serve

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

the petitioner corporation for a period of five years from the date of appointment to any of the grades in which they would be absorbed. Learned counsel argued that the cumulative effect of various clauses mentioned in the advertisements clearly show that the respondents concerned were appointed only as Trainees, that they were required to undergo the training period of two years, that during the training period they would be paid remuneration on consolidated basis and even after successful completion of the training, their absorption into regular posts was not automatic, but subject to their undergoing trade test and interview and their performance during the training period. Learned counsel further argued that it is not as if the respondents concerned were selected against a regular post, carrying the time scale of pay, and that before they formally taking over the charge, they were given training. In the present case, the selection was to the post of Trainees and that the selected trainees were paid only on consolidated basis and that no time scale of pay was given to them. Further, on completion of training period, their absorption into the regular post was also not automatic and it depended upon other conditions which the trainees have to satisfy.

5. Learned counsel argued that the reliance placed by the respondents concerned on Office Memorandum dated 22-10-1990 in support of their claim for increments is wholly misconceived as Clause (3) of the said office memorandum is very clear in its terms that where a person has been selected for regular appointment and before formally taking over charge of the post for which the selected person was required to undergo training, the training period undergone by such a Government servant whether on remuneration or stipend or otherwise may be treated as duty for the purpose of drawing increments. It is thus clear that the said office memorandum is applicable in cases where a person has been selected for "regular appointment" and before formally taking over charge of the post, he was required to undergo training. In the present case, there was no "regular appointment" and further there was no question of "training" the selected person before he formally took the charge. Therefore, the said office memorandum is not applicable to the present case. Learned counsel invited our attention to the letter dated 3-5-1994 whereby the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions has clarified that the since trainees were not selected against specific post and the period of training was prior to their regular appointment, the request for counting such training period as duty period for the purpose of increment/pension could not be considered.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

6. Learned counsel further invited our attention to the provisions of F.R.26 and Clause (1) of Government of India's orders. Learned counsel very vehemently argued that under F.R.26, which prescribes the condition on which service counts for increments in a time-scale, all duty in a post "on a time scale" counts for increments in that time-scale and further Clause (1) of Government of India's Orders, which pertains to the training period before appointment on stipend or otherwise counts for increment, also clarifies that under F.R.26 only duty in a post on time-scale counts for increments in that time-scale. As per F.R.9(6)(a)(i) the services as a probationer or apprentice is treated as duty provided that service as such is followed by confirmation. As such, the training period during which a Government servant is not remunerated in the scale of pay attached to the post cannot be treated as duty. Learned counsel argued the effect of F.R.26 and Clause (1) of Government of India's orders on F.R.26 makes the position very clear that it is only duty in a post on time-scale counts for increments in that time-scale and that the training period during which a Government servant is not remunerated in the scale of pay attached to the post cannot be treated as duty. Therefore, under the above said circumstances, since the respondents concerned were not selected for any regular post carrying the time scale of pay, their training period cannot be treated as time spent on duty for the purpose of granting increments. The Tribunal completely went wrong in allowing the claim of the respondents concerned and, therefore, the impugned order is liable to be set aside.

7. On the other hand, learned counsel for the respondents concerned submitted that thought the petitioner corporation stated in their advertisements that the selection was for the post "Stipendary Trainees", in fact it was a training before selection/absorption to the regular post carrying the time scale of pay and that the respondents were subjected to undergo the selection process and also required to execute a bond that after training period and on their absorption, they would work with the petitioner corporation for five years. Further, the respondents are governed by the rules and regulations framed by the petitioner corporation from time to time and as seen from the advertisements that after successful completion of training and after assessing their performance, they would be absorbed in the regular posts. Therefore, once the respondents were given a guarantee of employment in a permanent post immediately after completion of the training, it can be presumed that they were given training before joining in the regular post carrying the time scale of pay. Though the advertisements mentioned the posts as "Stipendary Trainees" and that they would be paid "consolidated pay", but that does not disentitle the respondents concerned to claim for treating the training period as duty period for drawing increments. Learned counsel argued that

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

when once the respondents successfully completed their training and after satisfying the conditions prescribed for their absorption in the regular post, absorbed by the petitioner corporation in the regular post carrying the time scale of pay, in the light of the office memoranda dated 22-10-1990 and 31-3-1992 issued by the Government of India, they are entitled to the benefit of treatment of such training period as duty for the purpose of increment. Learned counsel further argued that the Tribunal was, therefore, right in allowing the claim of the respondents concerned.

8. Heard the learned counsel for the parties. Perused the entire material placed on record. A perusal of the materials placed on record shows that though the petitioner corporation has selected the respondents concerned as "Stipendary Trainees" and that during the training period they were paid stipend on consolidated basis, they were given a guarantee of absorption in regular post carrying the time scale of pay and further they are governed by the rules and regulations framed by the petitioner corporation from time to time. Further, the respondents concerned, on their selection as trainees, were required to execute a bond giving an undertaking to the petitioner corporation that they would work for a period of five years. The only objection raised by the petitioner corporation is that F.R.26 and Clause (1) of the Government of India's orders on F.R.26 prescribe the condition that all duty in a post on a time-scale counts for increments in that time-scale and the training period during which a Government servant is not remunerated in the scale of pay attached to the post cannot be treated as duty. However, it is seen that when the Staff Side in the National Council have raised a demand that the training period should be counted for the purpose of drawing increments as otherwise the concerned staff, particularly the non-gazetted in the technical departments, where the training period is a long one is put to perpetual disadvantage, vis-a-vis the staff in non-technical jobs who are recruited along with technical staff in the same scale of pay, the Government of India issued office memorandum dated 22-10-1990 clarifying the position that in case where a person has been selected for regular appointment and before formally taking over charge of the post for which the selected person is required to undergo training, the training period undergone by such a Government servant whether on remuneration of stipend or otherwise may be treated as duty for the purpose of drawing increments. By the subsequent office memorandum dated 31-3-1992, this benefit of treatment of such training as duty for the purpose of increment was allowed to the Government servants who have undergone such training on or after 1-1-1986, with actual effect from 1-10-1990. Therefore, in the present case, though the petitioner corporation selected the respondents concerned as trainees, with no time scale of pay, for all practical purposes they were given the guarantee of absorption after completion of training. Therefore, it is implied that the respondents concerned were

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

selected against the anticipated regular posts, carrying the time scale of pay. The respondents concerned on their selection were given training and instead of giving them the time scale of pay, they were paid on consolidated basis. Further, such trainees, on successful completion of their training, continued their service with the petitioner corporation when they were absorbed in the regular posts carrying the time scale of pay. In such circumstances, we are of the considered view that the respondents concerned are entitled for the benefits under the office memoranda dated 22-10-1990 and 31-3-1992. Therefore, we are unable to appreciate the contention of the learned counsel for the petitioner that the respondents concerned were selected only as stipendary trainees to undergo the training and no job guarantee was given after completion of training and that they were paid only a consolidated remuneration as stipend during the training period. We are also unable to appreciate the contention of the learned counsel for the petitioner that after completion of the training, there is another selection process for appointment in a substantive post carrying the time scale of pay and, therefore, the training underwent by the respondents concerned was a pre-recruitment training having no relevance or connection to their absorption in the regular post. As we have already observed, though the respondents were called as trainees, it was a training given to them after their selection to the regular post and prior to formally taking over the charge of the regular post. The only objection taken by the petitioner corporation is that the respondents were not given any time scale of pay, but were paid only consolidated pay. F.R.9 and F.R.26 read with the office memoranda dated 22-10-1990 and 31-3-1992 clarify the position that the training period undergone by such a Government servant whether on remuneration of stipend or otherwise may be treated as duty for the purpose of drawing increments. Therefore, there is no question of adopting a strict interpretation of the term "consolidated pay" to deny the respondents' claim for grant of increments. In view of the above we are thoroughly satisfied that the stand of the petitioner corporation is not correct. Accordingly we hold that the period of training which the respondents concerned have undergone training before their absorption in the regular posts is to be counted as duty period for the purpose of grant of increments. The Tribunal was perfectly justified in allowing the claim of the respondents. We see no ground to interfere with the impugned order passed by the Tribunal.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

9. In the result, the writ petitions are dismissed. No costs. Connected W.P.M.P. is closed.

Jai

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1. The Registrar
Central Administrative Tribunal
Madras Bench
City Civil Court Buildings
Madras 104

2. The Secretary,
Government of India,
Department of Atomic Energy,
Bombay

+ 2 ccs to M/s. Row Reddy Advocate SR No.30103, 30102

+ 1 cc to Mr.N. Murali Krishnan, ACGSC SR No.30280

GV(CO)
SR/17.7.2006

Pre-delivery ORDER in
W.P. Nos.15509 of 1998
and 15062 of 1998

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/